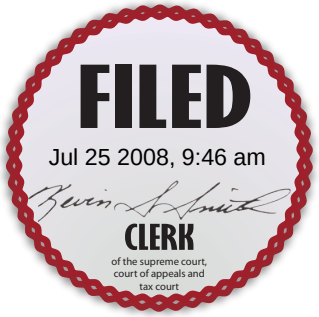


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# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| CHARLES NICHOLS, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 24A04-0801-CR-31 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM FRANKLIN CIRCUIT COURT
The Honorable J. Steven Cox, Judge
Cause No.24C01-0509-FD-895

**July 25, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

## Case Summary and Issue

Following a jury trial, Charles Nichols appeals his conviction of theft, a Class D felony. On appeal, Nichols raises one issue, which we restate as whether sufficient evidence supports his conviction. Concluding that sufficient evidence supports Nichols's conviction, we affirm.

## Facts and Procedural History

On September 22, 2005, Nichols's girlfriend, Tricia Boggs, was working alone at a bar in Franklin County. Between 1:00 and 1:30 that afternoon, Nichols arrived at the bar. Over approximately the next four hours, Nichols ate lunch and consumed six beers and six shots of alcohol. According to Boggs, she had planned on taking Nichols home after she finished her shift, but around 5:45 she opened the back door to the bar and observed him walking toward her vehicle with two cases of beer. Boggs also observed that a keg of beer had been removed from the storage area of the bar and placed outside. Boggs told Nichols, "what are you doing I need this job," but Nichols did not respond and continued walking toward her vehicle. Transcript at 87. Boggs was unable to pursue Nichols because there were patrons in the bar, so she contacted the bar's owner, Kim Hollenbach, and told her what had happened. Approximately one hour later Boggs went to her vehicle and observed the same two cases of beer next to the rear-passenger side of the vehicle, as well as five or six cases of beer and several bags of food inside the vehicle.

Some time after Hollenbach arrived at the bar, she contacted Officer Brent Campbell of the Brookville Police Department, who in turn contacted Officer Keith Davis. Along with Hollenbach, Officers Campbell and Davis reviewed a video

surveillance recording of the storage area of the bar. According to Officer Davis, the recording depicted Nichols entering the storage area of the bar seven times between 4:58 and 5:40, and leaving with "cases, bottles, you see him dragging a keg." Id. at 72. According to Hollenbach, a review of the bar's inventory indicated that the beer and food that was missing from the storage area; this missing beer and food corresponded to the beer and food that were recovered from inside and around Boggs's vehicle. Hollenbach's inventory review also indicated that twelve additional cases of beer were unaccounted for.

On September 30, 2005, the State charged Nichols with theft, a Class D felony. On November 26 and 27, 2007, the trial court presided over a jury trial at which Boggs, Hollenbach, Nichols, and Officers Campbell and Davis testified. On November 27, 2007, the jury found Nichols guilty, and the trial court entered a judgment of conviction based on this finding. On the same day, the trial court sentenced Nichols to three years executed. Nichols now appeals.

## Discussion and Decision

Nichols argues insufficient evidence supports his theft conviction. In reviewing challenges to the sufficiency of the evidence, "appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict." McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). It is the trier of fact's duty to weigh the evidence to determine whether the State has proved each element of the offense beyond a reasonable doubt. Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005). Accordingly, we "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have

allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" McHenry, 820 N.E.2d at 126 (quoting Tobar v. State, 740 N.E.2d 109, 111-12 (Ind. 2000)); see also Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) ("Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence." (quotations, footnote, and citations omitted) (emphasis in original)).

To convict Nichols of theft as a Class D felony, the State had to prove beyond a reasonable doubt that Nichols knowingly or intentionally exerted unauthorized control over property of another person, with the intent to deprive the other person of any part of its value or use. See Ind. Code § 35-43-4-2(a); Hayworth v. State, 798 N.E.2d 503, 507 (Ind. Ct. App. 2003). Nichols's sole argument is that there is insufficient evidence he acted knowingly or intentionally because he "had six beers and the equivalent of eight or nine shots at the bar and he was so drunk several hours later that it was difficult to wake him up." Appellant's Brief at 5-6.

Nichols overlooks that a defendant's voluntary intoxication is not an affirmative defense, nor can it negate an element of an offense. See Ind. Code § 35-41-2-5 ("Intoxication is not a defense in a prosecution for an offense and may not be taken into consideration in determining the existence of a mental state that is an element of the offense . . . ."); see also Sanchez v. State, 749 N.E.2d 509, 517 (Ind. 2001) ("[T]he legislature has decreed that the intoxication, if voluntary, supplies the general requirement of a voluntary act. That is sufficient to place the voluntarily intoxicated

offender at risk for the consequences of his actions, even if it is claimed that the capacity has been obliterated to achieve the otherwise requisite mental state for a specific crime."). Involuntary intoxication and lack of knowledge that a substance might cause intoxication are exceptions to this rule, see Ind. Code § 35-41-3-5, but Nichols does not argue that either of them apply here. Thus, we are left with the combined testimony of Boggs, Hollenbach, and Officers Campbell and Davis, indicating that Nichols was observed carrying two cases of beer from the bar, that Nichols was also observed on a video recording removing beer and dragging a keg from the storage area of the bar, that Nichols had not paid for this beer or otherwise received authorization to take it, that he kept walking toward Boggs's vehicle even though Boggs said to him, "what are you doing I need this job," tr. at 87, and that some of the beer Nichols was seen removing from the bar was recovered in and around Boggs's vehicle, along with several bags of food that also were confirmed as missing from the bar's inventory. This evidence is sufficient to support Nichols's conviction of theft as a Class D felony.

## Conclusion

Sufficient evidence supports Nichols's conviction of theft.

Affirmed.

BAKER, C.J., and RILEY, J., concur.